UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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INTERNATIONAL BUSINESS MACHINES CORPORATION
DEPT. 18G
BLDG. 300-482
2070 ROUTE 52
HOPEWELL JUNCTION, NY 12533

EXAMINER
HYLINSKI, STEVEN J

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/711,316	KELLEY ET AL.
	Examiner	Art Unit
	STEVEN J. HYLINSKI	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 November 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims 1-20 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 1-3, 6-12, 15-17, and 20-23 are rejected under 35 U.S.C. 103(a) as

being unpatentable over US 6,325,721 to Miyamoto et al. (Miyamoto) in view of US

6,099,409 to Brenner et al. (Brenner).

Re Claims 1, 6, 12, 15, 20-21, and 23,

Miyamoto discloses a method and system for providing on-site or remote players

with computer generated graphics that simulate an upcoming race, such as a horse

race, based on past and present forecast data. The simulation of a race is carried out

before the actual event occurs. After seeing the simulated result, the player can choose

the simulated result and place a wager on it (Abstract). The outcomes of the simulated

race(s) are based on past records of the horse, race course condition, the weight of the

horse, the jockey, jockey's record, etc, which all affect the probability of a horse winning

the simulated race. Col. 3 Lines 50-52 disclose that after seeing the results of the

simulated race, the viewer can still make judgment calls as to how they believe the race

results will play out. Since the invention of Miyamoto is disclosed as being a forecasting

tool available to the player before the end of wagering, and before the actual race is run,

it is understood that once the player sees the simulated outcome(s), the player may

enter a wager at the betting facility (horse track, or online betting interface, for example)

based on a simulated result. Although placing wagers through some wagering interface

based on Miyamoto's forecasted and electronically-simulated horse race outcome is the

next logical step and the only reasonable way in which Miyamoto's system would have

utility, Miyamoto does not specifically mention the further steps of the user selecting a

predicted result from the first through nth results, crediting an account for the user with a

first amount according to the user-selected result; permitting the user to utilize the first

amount for actually determining outcomes of at least some of the events; and after the

outcomes of a minimum number of the events have been actually determined,

permitting the user to utilize a second amount remaining from the first amount in the

account for a purpose other than for actually determining the outcomes of the events. ,

and while decreasing a probability that the predetermined outcome will occur per each

individual event until the outcomes of at least a minimum number of the events have

actually been determined, permitting the user to utilize the first amount for actually

determine the outcomes of at least some of the events.

Because the purpose of Miyamoto to use graphical simulation combined with

previous data to forecast future horse race results (Col. 1 Lines 39-44, also Figs. 3-6),

Miyamoto can obviously be used in concert with a system that allows a player to enter

wagers on horse racing. Thus, the prior art of Brenner is directly analogous art.

Brenner teaches the user selecting a predicted result from the first through nth

results (Col. 11 Lines 19-35, the player can wager on a single race event outcome, or

place "exotic" wagers such as a pick six, in which the player predicts ahead of time what

the results for six race events will be.), crediting an account for the user with a first

amount according to the user-selected result (In Brenner's abstract, he discloses that

the player can commit funds into an account on the wagering system that can be

associated with the wagers made); permitting the user to utilize the first amount for

actually determining outcomes of at least some of the events (after using the system of

Miyamoto to forecast and simulate results of a horse race(s) that have not yet occurred,

the player could logically then place wagers in a horse race wagering system, such as

that of Brenner. The invention of Brenner is capable of implementing and benefiting

from Miyamoto's invention because Brenner allows the player to view video clips of

previous races in order to aid in deciding on how to wager on future races. Brenner also

provides an electronic, interactive interface through which the player can view odds,

predicted payoffs, weather, weights, etc. as discussed in Col. 4 Lines 27-37. Miyamoto's

invention would provide a player who is preparing to place a wager using Brenner's

system, a much more comprehensive and easy-to-understand graphical aid for

forecasting future race results than could be obtained simply from sampling video clips

of past races, or sifting through numerical data.); and after the outcomes of a minimum

number of the events have been actually determined, permitting the user to utilize a

second amount remaining from the first amount in the account for a purpose other than

for actually determining the outcomes of the events (After the player has made an exotic

wager such as a pick six, which Brenner's system allows as discussed in Col. 11 Lines

19-35, the player's wager will be evaluated after all six races have established

outcomes. After the race results are known for all six races, the player may be credited

an amount based on any winnings, which will be credited to the player's account as

discussed in Col. 4 Lines 43-46 of Brenner.) Breeding also teaches after the outcomes

of a minimum number of the events have been actually determined, permitting the user

to utilize a second amount remaining from the first amount in the account for a purpose

other than for actually determining the outcomes of the events (Breeding Col. 4 Lines

38-46, after the "pick n" race has been evaluated and the player paid, the amount won,

if any, is credited to the player's account. The player may then use this amount to make

future wagers.), and while decreasing a probability that the predetermined outcome will

occur per each individual event until the outcomes of at least a minimum number of the

events have actually been determined, permitting the user to utilize the first amount for

actually determine the outcomes of at least some of the events (It is inherent with the

"pick n" wager of Brenner that the probability of winning decreases as the number of "n"

picks increases.)

At the time the invention was made, one of ordinary skill in the art would have

found it obvious to have combined Miyamoto, which is a system for forecasting and

simulating horse races in order to aid a player in picking a winner, with the horse race

wagering system of Brenner, which Brenner discloses as allowing the player to view

video clips before wagering (Abstract of Brenner), because Miyamoto's simulation takes

into account historical and current data for the horse, rider, track, etc automatically, and

would present a more immediately useful and representative forecast of potential future race results to a player who is preparing to place a wager, than simply watching video clips of past races would.

Re Claims 2, 7, and 11

It is an art-recognized definition in horse racing that the pick 3, pick 10, etc. wagers that Brenner describes, describe a user picking the winners for 3, 10, etc races, that will be run in series, the pick n wager being made before the first of n races have begun. Brenner discloses that the user may select the value of "n" in a pick n wager, anywhere between 3 and 10 (Col. 11 Lines 33-36). It is known in horse racing, that the higher the number of picks, the higher the payout will be, due to the greatly reduced probability of a player correctly predicting an increased number of sequential winners.

Re Claim 3,

Brenner discloses in the Abstract and Col. 4 Lines 38-46 that wagers made by the player are debited from an electronic account created for the purpose of funding wagers.

Re Claims 8 and 16,

After a "pick n" wager such as a pick 6 wager has been placed, and the outcome evaluated, any amount won will be deposited to the player's account, where it can be used for other wagers (Col. 4 Lines 44-46).

Re Claims 17 and 22,

Fig. 1 shows electronic user terminals **122** that communicated over a network **128**. Although Brenner's contemplated embodiment uses television terminals, at the

time the invention was made, it would have been notoriously obvious to one of ordinary

skill in the art, that the invention could have been implemented on any networked

electronic gaming terminal.

Conclusion

The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure and is included in the attached Notice of References Cited.Any

inquiry concerning this communication or earlier communications from the examiner

should be directed to STEVEN J. HYLINSKI whose telephone number is (571)270-

1995. The examiner can normally be reached on M-Thurs. 7:00a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Hotaling can be reached on 571-272-4437. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven J Hylinski/
Examiner, Art Unit 3714

/Scott E. Jones/
Primary Examiner, Art Unit 3714